

PART 3

PUBLIC RECORDS COMMISSION

10-7-301. Definitions.

As used in this part, unless the context otherwise requires:

- (1) "Agency" means any department, division, board, bureau, commission, or other separate unit of government created or established by the constitution, by law or pursuant to law, including the legislative branch and the judicial branch;
- (2) "Confidential public record" means any public record which has been designated confidential by statute and includes information or matters or records considered to be privileged and any aspect of which access by the general public has been generally denied;
- (3) "Disposition" means preservation of the original records in whole or in part, preservation by photographic or other reproduction processes, or outright destruction of the records;
- (4) "Essential records" means any public records essential to the resumption or continuation of operations, to the re-creation of the legal and financial status of government in the state or to the protection and fulfillment of obligations to citizens of the state;
- (5) "Permanent records" means those records which have permanent administrative, fiscal, historical or legal value;
- (6) "Public record(s)" or "state record(s)" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency;
- (7) "Records creation" means the recording of information on paper, printed forms, punched cards, tape, disk, or any information transmitting media.
"Records creation" includes preparation of forms, reports, state publications, and correspondence;
- (8) "Records disposition authorization" means the official document utilized by an agency head to request authority for the disposition of records. The public records commission shall determine and order the proper disposition of state records through the approval of records disposition authorizations;
- (9) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records in order to reduce costs and improve efficiency of recordkeeping.
"Records management" includes records retention schedule development, essential records protection, files management and information retrieval systems, microfilm information systems, correspondence and word processing management, records center, forms management, analysis, and design, and reports and publications management;

(10) "Records of archival value" means any public record which may promote or contribute toward the preservation and understanding of historical, cultural, or natural resources of the state of Tennessee;

(11) "Records officer" means an individual designated by an agency head to assume responsibility for implementation of the agency's records management program;

(12) "Section" and "division" means the records management division of the department of general services;

(13) "Temporary records" means material which can be disposed of in a short period of time as being without value in documenting the functions of an agency. Temporary records will be scheduled for disposal by requesting approval from the public records commission utilizing a records disposition authorization; and

(14) "Working papers" means those records created to serve as input for final reporting documents, including electronic data processed records, and/or computer output microfilm, and those records which become obsolete immediately after agency use or publication.

[Acts 1974, ch. 739, § 1; 1975, ch. 286, § 2; 1978, ch. 544, § 3; T.C.A., § 15-401; Acts 1981, ch. 364, § 3; 1984, ch. 891, § 1; 1984, ch. 947, § 1.]

Cross-References. Access, retention or disposal of confidential or archival records, §§ 10-7-504, 10-7-508.

Applicability of part, § 10-7-303.

Section to Section References. This section is referred to in §§ 10-7-303, 10-7-403, 10-7-404, 10-7-406, 10-7-413.

Attorney General Opinions. Student evaluations of professors as public records, OAG 93-67 (11/30/93).

Cited: Creative Restaurants, Inc. v. City of Memphis, 795 S.W.2d 672 (Tenn. Ct. App. 1990).

NOTES TO DECISIONS

1. Public Records.

The proper test in determining whether material is a public record remains whether it was made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency. Application of this test requires an examination of the totality of the circumstances. Griffin v. City of Knoxville, 821 S.W.2d 921 (Tenn. 1991).

Deceased's handwritten notes, confiscated at the death scene by a municipal police department in the course of a homicide investigation, were public records available for inspection by the public under this section. Griffin v. City of Knoxville, 821 S.W.2d 921 (Tenn. 1991).

10-7-302. Public records commission created - Duties.

A public records commission is hereby created to consist of the state treasurer, the comptroller of the treasury, the secretary of state, the director of legal services for the general assembly, and the commissioner of general services as permanent members, any of whom may designate a deputy with a vote as such person's agent to represent such person, the president of the Tennessee historical society as a nonvoting member, and, when required, one (1) temporary and nonvoting member as provided in § 10-7-303. It is the duty of the commission to determine and order proper disposition of state records. The commission shall direct the department of general services to initiate, through the records management division, by regulation or otherwise, any action it may consider necessary to accomplish more efficient control and regulation of records holdings and management in any agency. Such rules and regulations may authorize centralized microfilming for all departments, etc., or provide for other methods of reproduction for the more efficient disposition of state records. The commission shall elect its chairperson and shall meet not less often than twice annually. Members shall be reimbursed for actual and necessary expenses when attending meetings, and those members who do not receive a fixed salary from the state also shall be paid a per diem of ten dollars (\$10.00) for each day of actual meeting. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

[Acts 1974, ch. 739, § 2; 1975, ch. 286, § 2; 1976, ch. 806, § 1(58); 1977, ch. 89, § 24; T.C.A., § 15-402; Acts 1981, ch. 364, § 3; 1982, ch. 810, § 3; 1984, ch. 728, § 8.]

Compiler's Notes. The public records commission, created by this section, terminates June 30, 2000. See §§ 4-29-112, 4-29-221.

Section to Section References. This section is referred to in § 4-29-221.

10-7-303. Records management division - Creation, disposition and preservation of records - Land, legislative and judicial records.

- (a) The records management division of the department of general services shall be the primary records management agency for state government, and as such shall direct the disposition of all records, including electronic processed records and computer output microfilm records.
- (b) The division shall cooperate with other agencies in the creation of records, forms, etc., which will eventually be subject to retention and/or disposition scheduling.
- (c) Whenever the head of any state department, commission, board or other agency has certified that records created by such person's department, either permanent, temporary or working papers, as defined in § 10-7-301, have reached the end of the retention period established prior to the generation of such records, the public records commission shall then approve or disapprove, by a majority vote, the disposition of such records in a manner specified in the rules and regulations of the commission, and any disposition schedule already in

effect may be voided or amended by a majority vote at any time by the commission, upon recommendation of a member of the commission or the head of the appropriate department, commission, board or other agency, in consultation with the staff of the records management division.

(d) No record or records shall be scheduled for destruction without the unanimous approval of the voting members of the public records commission.

(e) All records concerning private or public lands, with the exception of leases, shall be forever preserved. The microfilm records of leases required to be microfilmed prior to disposition pursuant to the provisions of § 12-2-108(c) shall be forever preserved.

(f) (1) When the development of a records management system for legislative records or the disposition of legislative records is under consideration, the speaker of the senate or such speaker's representative, the speaker of the house of representatives or such speaker's representative, and the secretary of state or the secretary's representative shall serve as temporary nonvoting members of the commission. The representatives of the speakers of the senate and house of representatives need not be members of the general assembly.

(2) When the development of a records management system for judicial records or the disposition of judicial records is under consideration, the attorney general and reporter or the attorney general's representative, and the chief justice of the supreme court or the chief justice's representative, shall serve as temporary nonvoting members of the commission.

(g) This part applies to legislative and judicial records.

[Acts 1974, ch. 739, § 3; 1975, ch. 286, § 2; 1977, ch. 38, § 2; T.C.A., § 15-403; Acts 1981, ch. 364, § 3; 1984, ch. 891, § 2; 1991, ch. 498, §§ 4, 8.]

Section to Section References. This section is referred to in §§ 10-7-302, 12-2-108.

10-7-304. Records officer, systems or records analyst.

The head of each department, commission, board or agency shall designate a records officer, systems analyst, or records analyst, etc., who shall be an employee at the administrative level and who shall be instructed to cooperate with the staff of the records management section and the public records commission in carrying out the purposes of this chapter. It is the duty of the records officer to appear before the public records commission for the purpose of presenting on behalf of such record officer's department, commission, board or agency requests for disposition of records.

[Acts 1974, ch. 739, § 4; T.C.A., § 15-404.]

10-7-305. Administrative officer and secretary - Duties.

The commissioner of general services shall be the administrative officer and secretary of the public records commission and act on its behalf and by its direction to make and enter into contracts and agreements with other departments, agencies, boards and commissions of state government as the

commission may consider necessary, expedient or incidental to the performance of its duties under this chapter.

[Acts 1974, ch. 739, § 5; 1975, ch. 286, § 2; T.C.A., § 15-405; Acts 1981, ch. 364, § 3.]

10-7-306. Rules and regulations of commission.

(a) The commission shall issue rules and regulations which shall include such procedures as may be necessary to carry out the purposes of this chapter. Such rules and regulations shall provide, but not be limited to:

- (1) Procedures for the adoption of any record to be created by any department, board, commission or agency;
- (2) Standards and procedures for the reproduction of records for security or for disposal of original records;
- (3) Procedures for compiling and submitting to the division lists and schedules or records proposed for disposition;
- (4) Procedures for the physical destruction or other disposition of records.

(b) All rules and regulations must be approved by a majority of the voting members of the commission. The commissioner of general services as the administrative officer and secretary of the commission shall sign all rules and regulations on behalf of the commission.

(c) The rules and regulations shall be issued and promulgated in accordance with title 4. The commission need not formally meet to act under this section, but may adopt any rule, regulation, procedure or disposal with the written approval of all voting members.

[Acts 1974, ch. 739, § 6; 1975, ch. 286, § 2; T.C.A., § 15-406; Acts 1981, ch. 364, § 3.]

10-7-307. Title to and destruction of records transferred to state archives.

Title to any record transferred to the state archives is vested in the state library and archives. The state librarian and archivist may destroy originals of such records if such records have been microfilmed or converted to microform media of such quality which shall meet the minimum standards of the United States government.

[Acts 1978, ch. 544, § 4; T.C.A., § 15-407; Acts 1991, ch. 362, § 1.]

10-7-308. Title to records transferred to section.

Title to any record transferred to the section (records center) shall remain in the agency transferring such records to a state records center.

[Acts 1978, ch. 544, § 4; T.C.A., § 15-408.]